

The Honorable Tana Lin

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

PHILADELPHIA INDEMNITY INSUR-
ANCE COMPANY, a Pennsylvania corpora-
tion, as subrogee of DH&G, LLC,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

)
)
) Case No. 2:19-cv-00138-TL
)

) DECLARATION OF JOHN R. MacMILLAN
) IN SUPPORT OF PLAINTIFF'S OPPOSI-
) TION TO DEFENDANT'S MOTIONS IN
) LIMINE
)
)
)
)

I, John R. MacMillan, being duly sworn and under oath state as follows:

1. I am one of the attorneys representing Plaintiff, Philadelphia Indemnity Insurance
Company as subrogee of DH&G, LLC, in this matter.

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///

///

2. Attached as **Exhibit A** are true and correct copies of notices issued by Defendant in connection with replacement programs and product recalls relating to HP Notebook computer batteries.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED: September 25, 2023.

MacMILLAN, SCHOLZ, & MARKS, LLC

By: /s/ John R. MacMillan
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Replacement programs and product recalls

Replacement programs

HP participates in voluntary replacement programs for components or products that may cause functionality issues but are not related to a safety hazard.

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Recalls

In cooperation with country government safety authorities, HP participates in voluntary recall programs when a defective part is shown to cause a potential safety hazard.

August 2019 Expansion of the 2018 HP Notebook Computer and Mobile Workstation Battery Safety Recall and Replacement Program - Additional Batteries Identified

HP urges customers to recheck all potentially affected products

In August 2019, HP expanded its ongoing worldwide voluntary safety recall and replacement program for certain notebook computer and mobile workstation batteries which was announced January 2018 and expanded in January 2019. The potentially affected batteries may have been shipped with specific HP ProBook (64x G2 and G3 series, 65x G2 and G3 series, 4xx G4 (430, 440, 450, 455, and 470)), HP x360 310 G2, HP ENVY m6, HP Pavilion x360 15 inch, HP 11 Notebook Computers and HP ZBook (17 G3, 17 G4, and Studio G3 & G4) Mobile Workstations sold worldwide from December 2015 through October 2018. Additionally, these batteries may have been sold as accessories or replacement batteries for HP ProBook 4xx G5 (430, 440, 450, 455, and 470), HP ENVY 15, and HP Mobile Thin Clients (mt20, mt21, and mt31) or for any of the preceding products from December 2015 through December 2018 through HP or an authorized Service Provider. These batteries have the potential to overheat, posing a fire and burn hazard to customers.

It is essential that customers recheck their batteries, even if they did so previously and were informed they were not affected. Note: customers who have already received a replacement battery through the recall program are NOT affected by this expansion. Customers should cease use of affected batteries immediately. As many of these batteries are internal to system and are not customer replaceable, HP is releasing an update to the BIOS for batteries affected by this program expansion that will discharge the battery and disable future charging until the battery is replaced. HP customers affected by this program will be eligible to receive replacement battery services for each verified, affected battery at no cost.



Learn

January 2017 Expansion of the 2016 HP Notebook Computer Notebook Battery Safety Recall and Replacement Program - Additional Batteries Affected

HP urges customers to recheck all potentially affected products

In January 2017, HP announced an expansion of its ongoing worldwide voluntary safety recall and replacement program for certain notebook computer batteries, which was announced in June 2016. The program has been expanded to include additional batteries that were shipped with the same notebook products.

The affected batteries were shipped with specific HP, Compaq, HP ProBook, HP ENVY, Compaq Presario, and HP Pavilion Notebook Computers sold worldwide from March 2013 through October 2016, and/or were sold as accessories or spares, or provided as replacements through Support. These batteries have the potential to overheat, posing a fire and burn hazard to customers. HP urges customers to recheck their batteries, even if they did so previously, and were told they were not affected. However, original batteries replaced as part of the program announced in June 2016 are not affected by this program expansion. Customers should cease use of affected batteries immediately. HP customers affected by this program will be eligible to receive a replacement battery for each verified, affected battery at no cost.



Learn

HP Notebook PC AC Power Cord Safety Recall and Replacement Program

On August 26, 2014 HP announced a worldwide voluntary recall and replacement program in cooperation with various government regulatory agencies, for certain AC power cords used with AC adapters distributed worldwide with HP and Compaq notebook and mini notebook computers, as well as with AC adapters provided with accessories such as docking stations. These AC power cords have the potential to overheat, posing a fire and burn hazard. The affected AC power cords were shipped with products and accessories sold from September 2010 through June 2012. HP customers affected by this program will be eligible to receive a replacement AC power cord for each verified, recalled AC power cord at no cost.



Learn

HP Fax machine safety recalls

In cooperation with the U.S. Consumer Product Safety Commission and other safety regulatory authorities, HP announced voluntary safety recalls for certain HP single function Fax Machine models. HP Fax 1040 and 1050 were recalled on January 31, 2012 in Canada, Mexico and U.S.A, and HP Fax 1010 and 1010x were recalled on June 28, 2008 for Canada, Mexico and U.S.A. Affected HP customers are eligible to receive a rebate for qualified products.



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HP Notebook Computer and Mobile Workstation

Battery Safety Recall and Replacement Program

Program Summary

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FAQs

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HP is focused on managing the unprecedented Coronavirus (COVID-19) situation with both urgency and a deep sense of care. Please be aware that there may be some delays in services due to the public health emergency associated with the COVID-19 outbreak worldwide.

Program expanded in August 2019. It is essential to recheck your battery, *even if you did so previously and were informed that it was not affected. If you have already received a replacement battery, you are not affected by this expansion.*

In August 2019, HP expanded its worldwide voluntary safety recall and replacement program for certain notebook computer and mobile workstation batteries which was announced in January 2018 and expanded in January 2019.

These batteries have the potential to overheat, posing a fire and burn hazard to customers. For this reason, it is essential to recheck your battery, *even if you did so previously and were informed that it was not affected.* However if you have already received a replacement battery, you are not affected by this expansion.

Batteries affected by this program may have been shipped with specific HP ProBook 64x (G2 and G3), HP ProBook 65x (G2 and G3), HP ProBook 4xx G4 (430, 440, 450, 455, and 470), HP x360 310 G2, HP ENVY M6, HP Pavilion x360 15 inch, HP 11 notebook computers and HP ZBook (17 G3, 17 G4, and Studio G3 & G4) mobile workstations sold worldwide from December 2015 through October 2018. **They were also sold as accessories or provided as replacements from December 2015 through December 2018 for the above products, as well as additional products through HP or an authorized HP Service Provider, including certain HP Mobile Thin Client products.**

Many of these batteries are internal to the system, which means they are not customer replaceable. HP is providing battery replacement services by an authorized technician at no cost. HP is also releasing an update to the BIOS to add batteries affected by the program expansion. The updated BIOS places the battery in "Battery Safety Mode" so that the notebook or workstation can be safely used without the battery by connecting to an HP power adaptor. Batteries affected by this recall should immediately be put into "Battery Safety Mode".

Battery Safety Mode is only applicable to HP products affected by this recall. If the validation process identifies a battery as being eligible for replacement, the BIOS update should be applied and the system should be rebooted. During the reboot process, an option will be presented to enable Battery Safety Mode. Accepting Battery Safety Mode causes the battery to discharge and to cease future charging until Battery Safety Mode is disabled. HP strongly recommends accepting Battery Safety Mode so that the notebook or mobile workstation can be safely used by connecting to an HP power adaptor. For more information please refer to the FAQs tab on this website.

HP's primary concern is for the safety of our customers. HP is proactively notifying customers, and will provide replacement battery services for each verified, eligible battery, at no cost. For customers with 5 or more potentially affected batteries, HP has put in place a process to assist with validation and ordering. For details please refer to the FAQs tab on this website.

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CPSC Announcements

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Announcement

Additional Content

Battery Safety Mode / Bios
Update InformationReplacement Option
Information

Swollen Battery Information

Getting Started

Note: Not all batteries in all HP ProBook 64x, HP ProBook 65x, HP ProBook 4xx, HP x360 310 G2, HP ENVY, HP Pavilion x360 15 inch, HP 11 notebooks, HP Thin Clients, and HP Zbook mobile workstations are affected by this recall.

The HP Battery Program Validation Utility will check if the battery in your notebook computer is affected. Validation using the utility generally takes less than 30 seconds

Download HP Battery Validation Utility

Minimum system requirements for the utility are:

- Windows Operating System
- Microsoft .Net Framework 4.5.2
- HP Software Framework

If you do not meet minimum requirement's, please download the fully loaded battery validation utility that will install the required frameworks.

After installation click this icon on your desktop to check your battery:



Notebook Product Names for batteries that may be affected

The following products may have been shipped with affected batteries

ProBook	HP Probook 640 G2	HP ProBook 640 G3
	HP ProBook 645 G2	HP ProBook 645 G3
	HP ProBook 650 G2	HP ProBook 650 G3
	HP ProBook 655 G2	HP ProBook 655 G3
	HP ProBook 430 G4	HP ProBook 440 G4
	HP ProBook 450 G4	HP ProBook 455 G4
	HP ProBook 470 G4	
ZBook	HP ZBook 17 G3	HP ZBook 17 G4
	HP ZBook Studio G3	HP ZBook Studio G4
x360	HP x360 310 G2	
Pavilion	HP Pavilion x360 15 inch	
ENVY	HP ENVY m6	
HP 11	HP 11 Notebook PC	

The following products are compatible with, but were not shipped with, affected batteries. Customers may have purchased a battery as an accessory or received a replacement battery through services that is affected by the recall.

ProBook	HP ProBook 430 G5	HP ProBook 440 G5
	HP ProBook 450 G5	HP ProBook 455 G5
	HP ProBook 470 G5	
ENVY	HP ENVY 15	
Mobile Thin Client	HP mt20	HP mt21
	HP mt31	

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HP Notebook Computer Battery Safety Recall and Replacement Program

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HP is focused on managing the unprecedented Coronavirus (COVID-19) situation with both urgency and a deep sense of care. Please be aware that there may be some delays in services due to the public health emergency associated with the COVID-19 outbreak worldwide.

Program expanded in January 2017. It is essential to recheck your battery, *even if you did so previously and were informed that it was not affected.*

If you have already received a replacement battery, you are not affected by this expansion.

In January 2017, in cooperation with various government regulatory agencies, HP announced an expansion of its ongoing worldwide voluntary safety recall and replacement program for certain notebook computer batteries, which was announced in June 2016. **The program has been expanded to include additional batteries that were shipped with the same notebook products. These batteries have the potential to overheat, posing a fire and burn hazard to customers.**

Because these batteries pose a fire and burn hazard, it is essential to recheck your battery, even if you did so previously and were informed that it was not affected. However if you have already received a replacement battery, you are not affected by this expansion.

The affected batteries were shipped with specific HP, Compaq, HP ProBook, HP ENVY, Compaq Presario, and HP Pavilion Notebook Computers sold worldwide from March 2013 through October 2016, and/or were sold as accessories or spares, or provided as replacements through Support.

Customers should cease use of affected batteries immediately. Customers may continue to use their notebook computer without the battery installed, by connecting the notebook to external power. HP's primary concern is for the safety of our customers. HP is proactively notifying customers, and will provide a replacement battery for each verified, eligible battery, at no cost. If a replacement battery is not available, an HP representative will contact you within 2 business days to discuss other resolution options. For customers with 10 or more potentially affected batteries, HP has put in place a process to assist with the validation and ordering process. For details please refer to the FAQs tab on this website.

Getting Started

Note: Not all batteries in all HP, Compaq, HP ProBook, HP ENVY, Compaq Presario, and HP Pavilion Notebook Computers are affected.

Click + sign to view a list of Notebook Product Names and battery bar code numbers for batteries that may be affected.

Option A (Recommended): HP Battery Program Validation Utility will check if the battery in your notebook computer is affected. Validation using the utility generally takes less than 30 seconds. Requires .net 4.5 framework and HP CASL Framework to be installed in order for utility to function. If you do not meet minimum requirement's, please download the fully loaded battery validation utility that will install the required frameworks.

[Download Utility \(EXE, \(1.9 MB\)\)](#)

Option B: Follow the manual validation process to check if your battery is affected.

[Validate Manually](#)

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January 24, 2017 -
Expansion
June 14, 2016

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[In-store poster \(PDF, \(200 KB\)\)](#)

[Customer letter \(PDF, \(100 KB\)\)](#)

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Battery Safety Recall and Replacement Program

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Is HP announcing a new Battery Recall Program?

No, HP is not announcing a new Recall Program. However, HP is expanding the worldwide voluntary safety recall and replacement program for batteries in specific notebook computer and mobile workstations that was announced in January 2018 and expanded in January 2019. **This is only a battery recall.** Neither HP computer notebook nor mobile workstations are being recalled.

Why is HP expanding the recall program for notebook and mobile workstation batteries?

HP's primary concern is for the safety of our customers. **Following the completion of a thorough review of all records, our battery supplier recently informed us of additional batteries not identified in the program expansion announced in January 2019. HP is expanding the program to include these additional batteries that may have been shipped with some of the same notebooks and workstations affected by the recall program.**

Batteries affected by this recall have the potential to overheat, posing a fire and burn hazard to customers. HP strongly encourages customers to cease use of affected batteries immediately. Many of these batteries are internal to the system, which means they are not customer replaceable. You should not remove them on your own. HP released a BIOS update in August 2019 to include batteries added by the program expansion for customers whose batteries are affected by this recall program that will put the battery into "Battery Safety Mode". By enabling Battery Safety Mode, the computer notebook can continue to be safely used by connecting to an HP power adaptor. HP will provide replacement battery services for each verified, affected battery, at no cost to you.

In line with supplier guidance, we do not anticipate any further expansion of the program.

Which notebooks are affected by this battery replacement program?

Batteries affected by this recall may have been shipped with specific HP ProBooks (64x G2 and G3, 65x G2 and G3, HP 4xx G4 (430, 440, 450, 455, and 470)), HP x360 310 G2, HP ENVY m6, HP Pavilion x360 15 inch, HP 11 notebooks and HP ZBook (17 G3, 17 G4, Studio G3 and G4) mobile workstations sold worldwide from December 2015 through October 2018.

The following products are compatible with, but were not shipped with, affected batteries: HP ProBook 4xx G5 (430, 440, 450, 455 and 470), HP ENVY 15, and HP Mobile Thin Clients (mt21, mt22,

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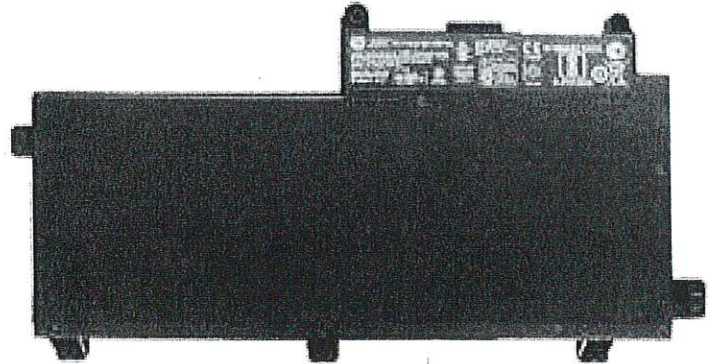
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United States
CONSUMER PRODUCT
SAFETY COMMISSION

HP Recalls Batteries for Notebook Computers and Mobile Workstations Due to Fire and Burn Hazards



Representative HP computer and battery



Name of Product:

Lithium-ion batteries for HP notebook computers and mobile workstations

Hazard:

The lithium-ion batteries can overheat, posing fire and burn hazards

Remedy:

Replace

Recall Date:

January 04, 2018

Units:

About 50,000 (in addition, 2,600 were sold in Canada)

Consumer Contact

HP toll-free at 888-202-4320 from 8 a.m. to 7 p.m. CT Monday through Friday or online at www.HP.com/go/batteryprogram2018 or www.hp.com and click "Recalls" for more information.

Recall Details

In Conjunction With:



Description:

This recall involves lithium-ion batteries for HP Notebook computers and mobile workstations. The batteries were shipped with or sold as accessories for HP ProBooks (64x G2 and G3 series, 65x G2 and G3 series), HPx360 310 G2, HP Envy m6, HP Pavilion x360, HP 11, HP ZBook (17 G3, 17 G4, and Studio G3) Mobile Workstations. The batteries were also sold as accessories or replacement batteries for the HP ZBook Studio G4 mobile workstation or for any of the products listed above.

Remedy:

Consumers should immediately visit www.HP.com/go/batteryprogram2018 to see if their battery is included in the recall and for instructions on how to enable "Battery Safety Mode" if their battery is included in the recall. The website provides consumers instructions on how to initiate the validation utility to check their battery and what to download if their battery is included in the recall. These batteries are not customer-replaceable. HP will provide free battery replacement services by an authorized technician.

Incidents/Injuries:

HP has received eight reports of battery packs overheating, melting, or charring, including three reports of property damage totaling \$4,500 with one report of a minor injury involving a first degree burn to the hand.

Sold At:

Best Buy and other stores and authorized dealers nationwide and online at www.Amazon.com, www.hp.com and other websites. The batteries were shipped in notebook computers and mobile workstations sold from December 2015 through December 2017 for between \$300 and \$4,000. The batteries were also sold separately for between \$50 and \$90.

Importer(s):

HP Inc., of Palo Alto, Calif.

Manufactured In:

China

Recall number:

18-077

Fast Track Recall

Note: Individual Commissioners may have statements related to this topic. Please visit www.cpsc.gov/commissioners to search for statements related to this or other topics.

Recall Complaint

If you are experiencing issues with a recall remedy or believe a company is being non-responsive to your remedy request, please use this form and explain the situation to CPSC.

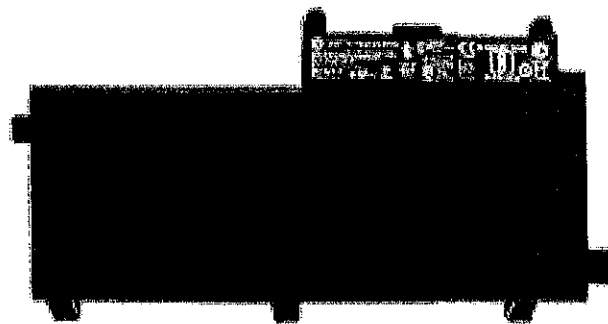
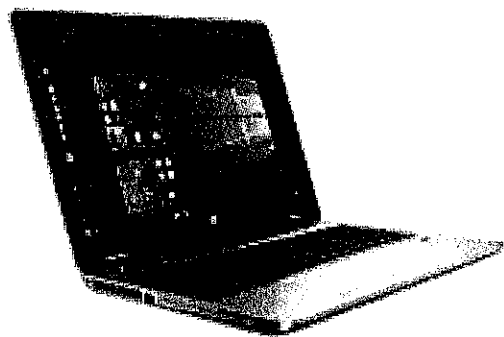


United States
CONSUMER PRODUCT
SAFETY COMMISSION

HP Expands Recall of Batteries for Notebook Computers and Mobile Workstations Due to Fire and Burn Hazards



NOTE: This recall expansion was previously announced independently on January 17, 2019 by the firm due to US government furlough.



Representative HP computer and recalled battery.



Name of Product:

EXHIBIT A
Page 9 of 13

Lithium-ion batteries for HP commercial notebook computers and mobile workstations

Hazard:

The lithium-ion batteries can overheat, posing fire and burn hazards.

Remedy:

Replace

Recall Date:

March 12, 2019

Units:

About 78,500 (In addition 50,000 were previously recalled in the U.S. in January 2018.)

Consumer**Contact**

HP toll-free at 866-671-7362 from 8 a.m. to 7 p.m. CT Monday through Friday or online at www.HP.com/go/batteryprogram2018 or www.hp.com and click "Recalls" for more information.

Recall Details

Description:

The recall expansion involves lithium-ion batteries for HP commercial notebook computers and mobile workstations were sold to businesses and other organizations. The batteries were shipped with or sold as accessories for HP ProBooks (64x G2 and G3 series, 65x G2 and G3 series, 4xx G4 series), HPx360 (310 G2), HP Pavilion x360 11inch Notebook PC, HP 11 Notebook PC, HP ZBook (17 G3, and Studio G3) mobile workstations. The batteries were also sold as accessories or replacement batteries for the HP ZBook Studio G4 mobile workstation, HP ProBook 4xx G5 series, HP ENVY 15, HP Mobile Thin Clients (mt21, mt22, and mt31), or for any of the products listed above.

Remedy:

Consumers should immediately visit www.HP.com/go/batteryprogram2018 to see if their battery is included in the recall and for instructions on how to enable "Battery Safety Mode" if their battery is included in the recall. The website provides consumers instructions on how to initiate the validation utility to check their battery and what to download if their battery is included in the recall. These batteries are not customer-replaceable. HP will provide free battery replacement services by an authorized technician.

Incidents/Injuries:

HP has received eight new reports of battery packs in the U.S. overheating, melting, or charring, including one report of minor injury and two reports of property damage.

totaling \$1,100.

Sold At:

HP and authorized dealers nationwide and online at www.hp.com. The batteries were shipped in notebook computers and mobile workstations sold from December 2015 through April 2018 for between \$300 and \$4,000 and were also sold separately between December 2015 and December 2018 for between \$50 and \$90.

Importer(s):

HP Inc., of Palo Alto, Calif.

Manufactured In:

China

Recall number:

19-079

Fast Track**Recall**

Note: Individual Commissioners may have statements related to this topic. Please visit www.cpsc.gov/commissioners to search for statements related to this or other topics.

Recall Complaint

If you are experiencing issues with a recall remedy or believe a company is being non-responsive to your remedy request, please use this form and explain the situation to CPSC.

CERTIFICATE OF SERVICE

I, John R. MacMillan, certify under penalty of perjury under the laws of the United States that, on the date set forth below, I caused the foregoing document to be served by the method(s) indicated below on the parties listed below:

Christopher G. Betke
Coughlin ◦ Betke LLP
175 Federal Street
Boston, MA 02110
Of Attorneys for Defendant

☐ Via Hand Delivery
☐ Via US Mail, Postage Prepaid, First Class
☐ Via Facsimile
☒ Via CM/ECF
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☐ Via Facsimile
☒ Via CM/ECF
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DATED: September 25, 2023.

/s/ John R. MacMillan

John R. MacMillan, WSBA #27912
Of Attorneys for Plaintiff